

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 538 of 1997

WITH

APPEAL FROM ORDER No.539 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHARDABEN WD/O VITHTHALDAS PRANJIVANDAS GANDHI

Versus

PRAVINABEN WD/O SHASHIKANT VITHTHALDAS GANDHI

Appearance:

MR SB VAKIL for Petitioner

MR DC DAVE for Respondent No. 1

NOTICE SERVED for Respondent No. 4, 5, 6

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. These two Appeals From Order arise out of the orders dated 10th October 1997 passed by the learned

Civil Judge(S.D.) Anand below Ex. 5 in Special Civil Suit No.93 of 1997 and 98 of 1997 whereby the learned trial judge was pleased to dismiss the applications of the appellant- plaintiff praying for temporary injunction restraining the defendants no. 4 and 5 (present respondents no. 4 and 5) from transferring plots no. 208, 47 and 48 respectively situated in GIDC Estate, Vithal Udyognagar, of the joint ownership of the appellant, heirs of deceased Shashikant and defendant no. 6 (respondent no.6) without the consent of the appellant, in the name of anybody and also praying for granting temporary injunction restraining the defendants no. 1 and 6 from transferring the same by sale, mortgage, gift, lease or in any manner till the final disposal of the suit.

2. The appellant instituted Special Civil Suit No. 93 of 1997 in the Court of learned Civil Judge, Senior Division, Anand on 29 the July 1997 praying for a declaration that the appellant, defendant no.6 and heirs of deceased Shashikant were the joint owners of plot no. 208 and each of them had 1/3rd share therein and for a perpetual injunction restraining the defendants no. 4 and 5 from transferring the same in the name of anyone else as the appellant had 1/3rd share therein. The plaintiff also prayed for perpetual injunction restraining the defendant no.1 from transferring the said plot by sale, mortgage, gift, lease or in any other manner as the defendant no.1 was not the sole owner of the said plot.

While instituting Special Civil Suit No. 98 of 1997 on 6th August 1997, the plaintiff prayed for identical reliefs of declaration and perpetual injunctions in respect of plot nos. 47,48 against the defendants no. 1,6, 4 and 5. In both the suits, the plaintiff submitted application Ex. 5 for temporary injunction. Initially, the ex-parte ad-interim injunction was granted against the defendant no.1 as prayed for and urgent notices were issued on the defendants.

3. The defendants no. 1 to 4 resisted both the suits and filed their respective composite written statements and replies. The defendant no.6 remained absent. The defendants no. 1, 2 and 3 raised two main contentions which were to the effect that the defendant no.1 became the sole owner of the suit property and she was in exclusive possession of the same from 1st April 1995 as sole proprietor of the business carried on therein by virtue of the dissolution deed and she has

also become the owner thereof along with her children by virtue of a partition deed dated 22nd November 1995 executed by herself, Chandrakant and defendant no.6 in respect of the immoveable properties of the deceased Vithaldas,.while the defendant no.4's main contention was that the plots no. 47 and 48 were already transferred in the name of the defendant no.1 as proprietor of the business carried on therein prior to the institution of the suits.

4. The learned trial judge, after hearing the parties, by his order dated 10th October 1997, dismissed the application Ex. 5 in both the suits and vacated the ad-interim injunction granted ex-parte.

As stated above, the appellant has challenged both the orders by filing the present Appeals From Order. both the orders by filing the present Appeals From Orders.

As the facts involved in these Appeals From Orders are identical, they are clubbed together and disposed of by this common judgment.

5. Mr.S.B.Vakil, learned Counsel appearing for the appellant, after taking me through the documents on record, submitted that the learned trial judge has committed an error by not properly considering the legal effect of the Memorandum of Partition dated 31st March 1989 and its consequences. In the submission of Mr. Vakil, after the execution of the documents, there was severance of the status of joint family of deceased Vithaldas and on partition of his HUF properties, the members of his family became separate owners thereof and the plaintiff, defendant no.6 and deceased Shashikant became the joint owners of the suit property with effect from 1st April 1989. Mr.Vakil pointed out that with effect from 1st April 1989, new partnership was constituted as Chandrakant and his wife retired from the previous partnership on 31st March 1989 and the newly constituted firm started paying contractual rent of Rs. 51,000/- in respect of the suit property to the three joint owners thereof with effect from 1st April 1989 for the use and occupation and thereby each of them was deriving the income of Rs. 17000/- annually. My attention has been invited to the entries made in the books of accounts of the firm and income- tax and wealth tax returns filed by the deceased Shashikant to show the rental income and 1/3rd share in the suit property. Mr. Vakil challenged the execution of the document of partition dated 22nd November 1995 produced by the defendant no.1 executed by Chandrakant, defendant no. 1

and the defendant no.6 by contending that the same is neither legal nor valid as all the properties were already divided before more than six-and-half years prior to the Memorandum of Partition dated 31st March 1989. In the submission of Mr. Vakil, the execution of document of partition dated 22nd November 1995 is with an oblique motive to deprive the plaintiff of her legitimate right, title, interest and share in the suit property as one of the three joint owners.

6. Mr. K.M.Patel, learned Counsel appearing on behalf of the respondents no. 1 to 3, on the other hand, while supporting the orders passed by the trial court, submitted that the suit properties belong to Gandhi Pulse Mills, a partnership firm. My attention has been invited to the documents, namely the Deed of Partition dated 6th March 1981 and 13th November 1985 wherein the plots no. 47, 48 and 208, machineries and building are shown to be the sole properties of Gandhi Pulse Mills. Mr. Patel, therefore, submitted that the said amount was invested on behalf of the partnership firm and it was not an investment of any person in personal capacity and the said suit property was not purchased by any person in his personal capacity, but all the investments made in the suit properties were the investments of partnership firm i.e. Gandhi Pulse Mills. By pointing out the lease deed executed by GIDC, it was submitted that the Deed of Lease was in the name of Gandhi Pulse Mills which was in existence till 31st March 1995. Mr.Patel, therefore, submitted that though the partners were changed, but right from 12th July 1977 to 31st March 1995, the suit properties i.e. plots no. 47, 48 and 208 remained as a property of the partnership firm- Gandhi Pulse Mills. Mr. Patel further pointed out that Gandhi Pulse Mills being a partnership firm, received a loan of Rs. 12 lacs from Karamsad Urban Bank by mortgaging plots no. 47 and 48 wherein all the seven partners including Shardaben (appellant) had signed the said Mortgage Deed. In the submission of Mr. Patel, this would go to show that the suit properties are of the ownership of Gandhi Pulse Mills. Mr. Patel finally submitted that by the Deed of Dissolution dated 31st March 1995, the respondent no.1 has become the sole proprietor of Gandhi Pulse Mills and, therefore, the GIDC rightly transferred the suit properties in the name of respondent no.1 on 2nd November 1995.

7. The above submissions would go to reveal that the parties are fighting tooth and nail for their cause. The appellant being the mother-in-law of the respondent no.1, on the basis of a partition deed dated 31st March 1989,

has contended that the plots no. 47, 48 and 208 are the HUF of deceased Vithaldas while on the other hand, the respondent no.1, by relying upon the document dated 21st March 1995, whereby the firm was dissolved has contended that she i.e. the respondent no.1 became the sole proprietor of the firm with the entire assets with liability. It is, therefore, the contention of the respondent no.1 that she is entitled to run the affairs of Gandhi Pulse Mills and to utilise the assets including the suit plots for the purpose of running the said Mills. After having heard the learned Counsel appearing for the respective parties at length and perusing the documents on record, I am of the opinion that the questions involved in these Appeals From Orders cannot be decided on the basis of documents on record alone. The disputes, namely whether the suit plots were the HUF of the deceased Vithaldas or not and whether they were used for Gandhi Pulse Mills wherein Vithaldas was the partner are the questions which cannot be decided without the parties leading evidence in the suit. True, the lease agreement clearly reveals that on 12th July 1977, the GIDC had made a Deed of Lease in respect of the suit property in favour of Gandhi Pulse Mills and it was not made in the name of any person in his personal capacity. However, it is not in dispute that the deceased Vithaldas had become the proprietor of Gandhi Pulse Mills after the dissolution of the partnership firm for the period from 22nd October 1979 to 5th March 1981. After the death of Vithaldas on 5th March 1981, his three sons, namely Chandrakant, Thakorbhai (respondent no.6), Shashikant (husband of respondent no.1) and respondent no.1 formed the partnership in the name of Gandhi Pulse Mills. The terms of the said partnership were recorded by the partnership deed dated 16th March 1981. Looking to the said document, it appears that the partners had neither transferred the suit property to the partnership nor did the suit property become the asset of the partnership firm. Similarly, the document of family division dated 31st March 1989 suggests that there was a division of the joint family of Vithaldas amongst the members i.e. three sons, Chandrakant, Thakorbhai and Shashikant and the appellant. Even the said document does not show the suit properties as the properties of Gandhi Pulse Mills. In the list of assets of the family, the assets shown are as under:-

Rs.7,15,700/- GIDC Plot No.47

Rs.6,67,200/- GIDC Plot No.48

The liabilities shown are as under:-

Rs.6,80,447.40 Property A/c of Gandhi Pulse Mills
Rs.2,08,704.51 Machinery A/c of Gandhi Pulse Millss.

The aforesaid two entries in the liabilities side would go to show that the family owed the said amounts to Gandhi Pulse Mills in Property Account and Machinery Account. These entries do not show that Gandhi Pulse Millss owned the said GIDC Plots No. 47 and 48. In the division, the same has been allotted in equal shares to three sons i.e. Chandrakant, Thakorbhai and Shashikant and the appellant. The plots have been valued at Rs. 19,50,900/-. One-third share allotted to each one of them is valued at Rs. 6,50,300/-. It would further go to suggest that Gandhi Pulse Mills had not invested Rs. 6,80,887.40 against the Lands and Buildings, but Vithaldas P.Gandhi HUF had invested the same by withdrawing the said amount from Gandhi Pulse Millss. In view of these documents, the claim of the respondents that Gandhi Pulse Mills is the owner of plots no. 47 and 48 does not prima facie appear to be correct. It is, however, the contention of the respondent no.1 that the document of family arrangement dated 31st March 1989 is not acted upon and there is nothing on record to show that the partners carried out any business to wipe out the liabilities. As stated above, at this stage, it is too early to express any opinion regarding the genuineness of the document dated 31st March 1989. Whether the said document was acted upon or not cannot be decided unless the parties go for trial. One cannot lose sight of the fact that Gandhi Pulse Mills paid rent of Rs. 51000/- per annum as shown in the firm's Manufacturing, Trading & Profit & Loss Account for the year ended on 31st March 1995. The balance sheet of M/s Gandhi Pulse Mills as on 31st March 1995 shows that in the said year, Rs. 17000/- were introduced in the capital of each of Thakorbhai Vithaldas Gandhi (HUF), Shashikant Vithaldas Gandhi (HUF) and Shardaben Vithaldas Gandhi (HUF) i.e. the appellant, on the basis of the division as recorded in the document dated 31st March 1989. In the 'Khata' (ledger) of the husband of the first respondent, there is a credit entry of Rs. 17000/- towards his share of the rent as on 31st March 1991. In the wealth tax return of Shashikant Vithaldas Gandhi (HUF) for the Assessment Year 1991-92 i.e. for the year ended on 31st March 1990, there is a debit balance shown in the name of Gandhi Pulse Mills (Land Account). In the said return, in the details of immoveable properties, 1/3rd share in Lands & Buildings of GIDC plots no.47, 48 and 208 is valued at Rs. 6,53,300/- as on the date of total partition of V.P.Gandhi HUF. This would prima facie go

to show that even subsequent to the date of mortgage in favour of Karamsad Urban Bank dated 5th January 1990, the said lands were treated as the properties of the appellant and the HUF of three sons of deceased Vithaldas and not of the partnership firm i.e. Gandhi Pulse Mills. The aforesaid facts supported by the documents prima facie go to suggest that the said plots are not the properties of Gandhi Pulse Mills or of any individual in personal capacity. If that is so, then the questions as to on what basis the partners decided to dissolve the firm with effect from 31st March 1995 and on what basis the respondent no.1 was made the sole proprietor of the firm with effect from 1st April 1995, are the questions which can only be answered when the parties appear before the trial court and lead the evidence to substantiate their claim. By virtue of the said document, the respondent no.1 is the sole proprietor of Gandhi Pulse Mills and since they want to dispose of the assets including the suit properties, that would virtually amount to dismissing the suit before trial. In other words, if the injunction as prayed for is not granted, the respondent no.1, by disposing of the assets of the firm, will make the suit infructuous.

8. Mr. Patel invited my attention to the Deed of Dissolution dated 22nd March 1995 dissolving the firm with effect from 31st March 1995 making the respondent no.1 as the sole proprietor of Gandhi Pulse Mills with effect from 1st April 1995 and submitted that the said deed is duly signed by the partners including the appellant. Mr. Patel submitted that as per the said deed, the assets shown in the balance sheet are given to the respondent no.1. Mr. Patel further submitted that the partners have agreed that the assets as well as liabilities as shown in the balance sheet as on 31st March 1990 have been given to the respondent no.1. By showing the Lands & Buildings in the schedule annexed to the Deed of Dissolution, it was pointed out that the partners have given the suit plots to respondent no.1. Since the appellant was one of the signatories to the said deed, in the submission of Mr. Patel, it is not open for the appellant to make a grievance about the same. Reliance is also placed on one more document, namely the Deed of Partition dated 22nd October 1995 signed by the heirs of deceased Vithaldas, namely Chandrakant, Thakorbhair, respondent no.1 and her minors whereby they have decided to give plots no. 47 and 48 to the respondent no.1.

9. Now, as far as the first document is concerned, on 31st March 1995, the said lands were not the

properties of any partnership firm. There is no mention therein of the execution of the document dated 31st March 1989. In view of the fact that in the Deed of Dissolution and in the balance sheet, there is no specific mention about the suit properties being of the partnership firm, even if the said document is alleged to have been signed by the appellant, the respondent no.1 cannot become the sole proprietor of the firm. In any case, all these documents are required to be gone into and proved in the suit. In my opinion, the suit property has a distinct legal entity quite different from the property of the firm and what the respondent no.1 got by virtue of various clauses of the Deed of Dissolution was the firm's property, stocks, dues and debts as shown in the balance sheet as on 31st March 1995 which do not include the suit property.

10. As far as the second document dated 22nd October 1995 is concerned whereby the respondent no.1 was given the suit plots no. 47 and 48, that also prima facie appears to be against the interest of the appellant. Admittedly, the said document dated 22nd October 1995 has not been signed by the appellant. In my opinion, that document has been executed subsequent to the date of the dissolution of the firm with effect from 1st April 1995. Therefore, prima facie, it appears that the same was executed to deprive the appellant of her legitimate right, title, share or interest in the suit property as one of the three joint owners.

11. The aforesaid discussion would go to reveal that it is too early for the respondent no.1 to claim the exclusive ownership of the firm as well as the assets. In my opinion, prima facie, the appellant has made out a case for injunction restraining the respondents and more particularly the respondent no.1 from transferring and/or alienating the suit properties. If the injunction as prayed for is refused, the appellant will suffer irreparable loss. The balance of convenience is also in favour of the appellant. If on the contrary, the respondent no.1 is permitted to transfer and/or alienate the suit properties, there will be multiplicity of proceedings.

12. Mr. Patel, by placing reliance on the decision of the Supreme Court in the case of Munna Vs. State of UP, AIR 1993 SC 276, submitted that if the appellant succeeds, she can be adequately compensated by awarding damages. Mr. Patel also submitted that if any alienation is made, it would be subject to the doctrine of lis pendens under section 52 of the Transfer of Property

Act. Having gone through the decision of the Apex Court, accepting the principle laid down therein, I can only say that the case on hand is distinguishable on facts. The facts and circumstances of the present case would not authorise the respondent no.1 to dispose of the properties when her claim of exclusive ownership is seriously challenged by the appellant substantiating it with the documents on record. Alienation of the suit properties subject to the doctrine of lis pendens would, in my opinion, invite number of complications. Since the parties are related to each other and this being a family dispute, it would be in the fitness of things that the parties sit together and arrive at an amicable solution. Since the order of the trial court is stayed by this Court by an order dated 23rd October 1997, if the said order is allowed to continue till the disposal of the suit, in a stipulated time limit, that would, in my opinion, serve the ends of justice. It is made clear that whatever observations and findings are recorded in this judgment are prima facie in nature and will not come in the way of either of the parties when the suits are heard and disposed of.

13. In the result, both the Appeals From Orders are allowed. The orders below Ex. 5 passed by the learned trial judge in Special Civil Suits No. 93 of 1997 and 98 of 1997 dated 10th October 1997 are set aside. The respondents are restrained from transferring and/or alienating the disputed properties in any manner in favour of anybody till the disposal of the suits. Considering the facts and circumstances of the case, the trial court is directed to hear and decide both the suits together and to see that the same are disposed of in accordance with law as expeditiously as possible and in any case, not later than 31st August 2000. The parties shall cooperate in the early disposal of suits. No order as to costs.

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